

Subpart 3514.4—Opening of Bids and Award of Contract

3514.404 Rejection of bids.

3514.404-1 Cancellation of invitations after opening.

(c) The Procurement Executive, upon recommendation of the cognizant HCA, is authorized to make the determinations prescribed in FAR 14.404-1(c) when an invitation is to be cancelled and all bids rejected after bid opening but prior to award.

(e)(1) The Procurement Executive, upon recommendation of the cognizant HCA, may authorize the contracting officer to complete the acquisition through negotiation in the determination to cancel the invitation for bids when the conditions in FAR 14.404-1(c) (6) or (7) apply.

3514.406 Mistakes in bids.

3514.406-3 Other mistakes disclosed before award.

The cognizant HCA is delegated the authority to make the administrative determinations in connection with mistakes in bids prior to award. This authority may not be redelegated. The General Counsel must review and concur with all determinations under FAR 14.406-3.

3514.406-4 Mistakes after award.

(b) The cognizant HCA is authorized to make determinations on mistakes in bids disclosed after award. The General Counsel must review and concur with all determinations made under FAR 14.406.4.

3514.407 Award.

3514.407-1 General.

(a) The contracting officer shall make a contract award to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only the price and price-related factors contained in FAR 14.201-8. Particular attention shall be paid in supply contracts to evaluation of transportation costs to ensure that the award is made to the lowest overall responsive and responsible bidder.

3514.407-6 Equal low bids.

(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

(1) Preference shall be given to the bidder whose supplies or services are obtainable in the Republic of Panama;

(2) When two or more bidders offer supplies or services obtainable in Panama, preference shall be given to the bidder whose bid has a larger percentage of components of Panamanian origin;

(3) If two or more bidders remain equally low after application of paragraphs (a) (1) and (2) of this subsection, the tie-breaking procedures prescribed in FAR 14.407-6(b) shall be followed;

(4) The order of precedence established in FAR 14.407-6 (a) and (b).

(c) When award is made by using the priorities under this 3514.407-6, the contracting officer shall incorporate the written agreement prescribed in FAR 14.407-6(c) in the contract.

PART 3515—CONTRACTING BY NEGOTIATION

Sec.

3515.000 Scope of part.

Subpart 3515.4—Solicitation and Receipt of Proposals and Quotations

3515.407 Solicitation provisions.

Subpart 3515.5—Unsolicited Proposals

3515.500 Scope of subpart.

3515.502 Policy.

3515.503 General.

3515.504 Advance guidance.

3515.506 Agency procedures.

3515.506-1 Receipt and initial review.

3515.506-2 Evaluation.

3515.507 Contracting methods.

3515.508 Prohibitions.

Subpart 3515.8—Price Negotiation

3515.802 Policy.

3515.804 Cost or pricing data.

3515.804-2 Requiring certified cost or pricing data.

3515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

3515.804-6 Procedural requirements.

Subpart 3515.9—Profit

3515.902 Policy.

Panama Canal Commission

3515.504

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7648, Mar. 2, 1990, unless otherwise noted.

3515.000 Scope of part.

This part implements and supplements FAR part 15 by providing additional solicitation provisions and by providing Commission policies and procedures on unsolicited proposals, price negotiations, and profit.

Subpart 3515.4—Solicitation and Receipt of Proposals and Quotations

3515.407 Solicitation provisions.

(a) In addition to the provisions prescribed in FAR 15.407, the contracting officer shall insert in solicitations the provisions at—

- (1) 3552.215-70, Price; and
- (2) 3552.215-71, Caution.

(b) The contracting officer shall insert the provision at 3552.215-72, All or None Award, in solicitations for supplies or services if the contracting officer determines that award will be made on an “all or none” basis to one offeror for all items because of the nature of the items (e.g., supply items must interface or otherwise be fully compatible with each other; items covering services are so interrelated that it would be impracticable to split the award). This provision may also be used in solicitations for construction if the contracting officer determines that its use is appropriate.

Subpart 3515.5—Unsolicited Proposals

3515.500 Scope of subpart.

This subpart implements and supplements the policies and procedures governing unsolicited proposals prescribed in FAR subpart 15.5. It also establishes the Commission contact point for coordinating the receipt, evaluation, and disposition of unsolicited proposals.

3515.502 Policy.

It is the policy of the Commission to receive, review, and consider for acceptance unsolicited proposals, as that term is defined in FAR 15.501 and fur-

ther described in FAR 15.503(c). As indicated in FAR 15.502, such proposals may be accepted for sole source negotiation only when appropriate authority exists in FAR subpart 6.3 and when all conditions in FAR 15.507(b) have been complied with.

3515.503 General.

(f) Unsolicited proposals for the performance of services are, except as discussed in this paragraph, unacceptable as the performance of services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service, and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance, provided that such acceptance can be made in conformance with the policy in 3515.502.

3515.504 Advance guidance.

(a) It is not uncommon for sales representatives and engineers to approach field personnel of the Commission to discuss their products or proposals. Bureau Directors and Heads of Independent Units shall take the necessary steps to ensure that Commission employees do not make any commitments, explicit or implied, on behalf of the Commission to eventually procure such products or proposals. Whenever any person orally makes an “unsolicited proposal”, Commission personnel shall inform the offeror that unsolicited proposals must be in writing and that further information should be obtained from the Commission’s Procurement Executive or Assistant Procurement Executive before the offeror proceeds with the submission of a written proposal. Commission personnel may provide copies, if practicable, of FAR subpart 15.5 and subpart 3515.5 of this regulation to persons interested in submitting unsolicited proposals.

3515.506 Agency procedures.

(a) In order to allow the Commission sufficient time to evaluate the unsolicited proposal and negotiate any resultant contract, prospective contractors should submit their proposals, in triplicate, well in advance of the time they desire to commence their effort or activity. A minimum of six months advance submission is suggested (see FAR 15.505(c)(2)).

(b) The Procurement Executive is the Commission contact point to coordinate the receipt and handling of unsolicited proposals within the commission.

3515.506-1 Receipt and initial review.

(a) The Procurement Executive shall conduct an initial review of each unsolicited proposal to determine if it appears to (1) constitute a valid unsolicited proposal as described in FAR 15.503(c), and (2) meet the requirements contained in FAR 15.506-1(a). If so, the Procurement Executive shall acknowledge its receipt to the sender and initiate processing of the proposal for evaluation in accordance with 3515.506-2 of this subpart. If the proposal does not meet the requirements of FAR 15.506-1(a), or otherwise does not qualify as an unsolicited proposal, the Procurement Executive shall return it to the sender with appropriate comments.

3515.506-2 Evaluation.

(a) Promptly after receipt of an unsolicited proposal deemed to satisfy the requirements of 3515.506-1(a), the Procurement Executive shall forward the original and all copies to the cognizant contracting officer for further coordination of the technical evaluation of the proposal. The cognizant contracting officer shall (1) determine the appropriate Commission organization that would fund the acquisition (see FAR 15.507(b)(3)) in the event the unsolicited proposal would be acceptable for a negotiated award pursuant to FAR 15.507(b), and (2) forward a copy to that organization for technical evaluation. If more than one organization has a potential interest in the proposal, or should otherwise be included in the evaluation phase because of its technical expertise, copies of the proposal shall be circulated to each such office.

(b) Evaluating organizations shall complete their evaluations as quickly as practicable and forward them, together with all copies of the unsolicited proposal, to the cognizant contracting officer. Evaluations shall take into consideration the factors in FAR 15.506-2(a), shall be in writing, and shall include, in addition to a comprehensive technical analysis and conclusion(s), a recommendation as to the ultimate disposition of the proposal. When the recommendation is to accept the unsolicited proposal, the evaluation shall include the documentation required in FAR 15.507(b)(3).

3515.507 Contracting methods.

(a) If the unsolicited proposal is not recommended for acceptance after technical evaluation, the cognizant contracting officer shall return the proposal and all copies thereof to the offeror, citing the reasons why the proposal is not acceptable. A copy of the letter shall be furnished to the Procurement Executive.

(c) If the unsolicited proposal is acceptable as a basis for negotiation, the cognizant contracting officer shall:

(1) Obtain the concurrence of the General Counsel before proceeding with negotiations, and

(2) Advise the Procurement Executive in writing of such action.

3515.508 Prohibitions.

(b) All unsolicited proposals received by units of the Commission shall be treated "FOR OFFICIAL USE ONLY" and shall be protected from unauthorized disclosure. No copies shall be made except as authorized by the Procurement Executive or cognizant contracting officer, as appropriate. All Commission personnel who handle a proposal are responsible for safeguarding the information therein, and shall not disclose the information to unauthorized personnel within or outside of the Commission.

Subpart 3515.8—Price Negotiation**3515.802 Policy.**

It is the policy of the Commission to obtain the cost or pricing data required pursuant to FAR 15.804 from all U.S. or

Panama Canal Commission

3516.000

foreign (including Panama) prime contractors and subcontractors.

3515.804 Cost or pricing data.

3515.804-2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the dollar threshold at FAR 15.804-2(a) for requesting certified cost or pricing data, the value of the contract shall include any priced options. Exercise of a priced option is not considered a price adjustment and does not require submission of cost or pricing data.

3515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

All findings rendered pursuant to FAR 15.804-3 (b)(2)(iii) and (c)(8) shall be approved by the cognizant HCA with the concurrence of the General Counsel. The exemptions permitted under FAR 15.804-3(g) and the waivers permitted under FAR 15.804-3(i) shall be authorized by the cognizant HCA with the concurrence of the General Counsel.

3515.804-6 Procedural requirements.

For requests for proposals or modifications not exceeding \$25,000, the contracting officer may require contractors to submit information for cost or price analysis on Panama Canal Form No. 6122, Cost Breakdown, at 3553.215.

Subpart 3515.9—Profit

3515.902 Policy.

(a) The Commission shall use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions of \$500,000 or more that require cost analysis based on the profit analysis factors in FAR 15.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.905-1 when analyzing profit for these contracts or actions:

- (1) All actions which do not require cost analysis;
- (2) Architect-engineer contracts;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements; and

(6) Other professional services.

(c) In developing a profit or fee prenegotiation objective, the contracting officer shall comply with the requirements in FAR 15.903.

(d) When profit analysis is required, any amount proposed by the prospective contractor for the cost of money for facilities capital allowable under FAR 31.205-10 shall be deducted from the prenegotiation cost base objective before calculating the profit objective.

(e) The cognizant HCA is responsible for establishing procedures to ensure compliance with this subpart.

PART 3516—TYPES OF CONTRACTS

Sec.

3516.000 Scope of part.

Subpart 3516.3—Cost-Reimbursement Contracts

3516.301 General.

3516.301-3 Limitations.

Subpart 3516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3516.601 Time-and-materials contracts.

3516.603 Letter contracts.

3516.603-2 Application.

3516.603-3 Limitations.

3516.603-70 Information to be furnished when requesting authority to issue a letter contract.

3516.603-71 Approval for modifications to letter contracts.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7650, Mar. 2, 1990, unless otherwise noted.

3516.000 Scope of part.

This part implements and supplements FAR part 16. It provides Commission policies and procedures for preparation of determinations and findings authorizing use of cost-reimbursement contracts, and for use of time-and-materials and letter contracts.